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Opening Remarks During a Panel Discussion at the Canadian Association of Journalists National Conference and Annual General Meeting

Speaking notes for

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Human Rights and Free Speech: Where are the Limits?

Opening Remarks During a Panel Discussion at the
Canadian Association of Journalists
National Conference and Annual General Meeting

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Check Against Delivery

Thank you very much.

I would like to begin by saying that I appreciate the opportunity to participate in this important and timely discussion.

I must tell you that when I first learned that this panel was being organized, I was excited by the prospect of sharing the facts surrounding this hot-button issue with a knowledgeable and engaged audience. And for sharing my passion – and that of my colleagues – for the important work that we do.

There is no disputing that everyone in this room feels passionate about freedom of expression. I would be concerned to learn otherwise. That passion stems from the fact that free expression is at the heart of our free and progressive society.

Free speech is also a cornerstone of human rights. This principle, coupled with an ardent belief in equality and freedom

from discrimination has had a positive and profound influence on the evolution of the society in which we live.

People from all over the world choose to make Canada their home because ours is a vibrant and progressive society – welcoming and inclusive.

And while we have made great strides, our progress is based on the principle that every aspect of our society continues to evolve. Discussions surrounding freedom of expression and section 13 of the *Canadian Human Rights Act* are a facet of our society that is not static.

The Commission certainly welcomes this discussion. After all, respected individuals such as Mr. Alan Borovoy – a champion of civil liberties and a Canadian icon – have voiced their opposition to the notion of limitations on freedom of expression. We have the utmost respect for this discussion and the varying opinions that have defined this centuries-old question. The Commission welcomes this Mr. Borovoy and I may respectfully disagree on such limitations, but his views have not affected his support of, and respect for the other work performed by human rights commissions.

People in Canada – and around the world – have, and will continue to disagree on where to draw the line. In Canada that line was defined by Parliament when it passed the *Canadian Human Rights Act* in 1977 and it was confirmed by the Supreme Court of Canada in the 1990 Taylor decision.

Much of the debate has revolved around section 13 of the Act, which empowers the Commission to deal with complaints regarding the communication of hate messages by telephone or on the Internet.

In the Taylor case, the Supreme Court found that section 13 did indeed restrict freedom of expression. However, section 1 of the Charter provides that rights and freedoms are subject to reasonable limits.

In determining whether section 13 constituted a reasonable limit, Chief Justice Brian Dickson concluded that the types of messages targeted by section 13:

... undermine(s) the dignity and self-worth of target group members and, more generally, contributes to disharmonious relations among various racial, cultural and religious groups, as a result eroding the tolerance and open-mindedness that must flourish in a multicultural society which is committed to the idea of equality.

Opponents of section 13 rely heavily on the American First Amendment. Under U.S. jurisprudence almost all forms of expression are protected.

The United States of America is an exception. Democracies throughout the world, such as the United Kingdom and Denmark have laws that restrict forms of expression in order to protect citizens from hatred.

Mr. Justice Russell Jursanz of the Ontario Court of Appeal summed it up well in 2005:

It seems fair to say that the American view is becoming a minority one in the world. Canada is part of what appears to be growing global consensus, which observes that careful restrictions of some forms of speech are both desirable and necessary.

That consensus is reflected in domestic law and international law.

The International Covenant on Civil and Political Rights, adopted by the UN in 1966, provides that freedom of expression *carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, ...*

The Convention also requires states to prohibit by law:

Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

As you can see, this is not a debate unique to Canada. The international community has come together and reached a consensus on these principles.

As a Commission, we are doing what Parliament has mandated us to do. We do so to the best of our ability, but always under the watchful eye of the courts.

We believe in the work that we do. We believe that there should be reasonable limitations on freedom of expression but that is not to say that individuals have the right **not** to be offended.

In the back-and-forth of public debate everyone should be able, without fear, to say or write things with which others may disagree and even find offensive. What is not permissible, however, is to use free speech as a cover for hatred.

Throughout this debate, the work of the Commission has often been referenced without a clear understanding of our procedures and obligations. Allow me to provide some context.

Any Canadian citizen can file a complaint with the Commission. We do not have discretion to turn people away.

Once a complaint is filed with the Commission, we have a responsibility to process it fairly and in accordance with established procedures. In most cases, this involves conducting an investigation. Only then can Commissioners decide whether there is enough evidence to warrant further inquiry or whether the complaint should be dismissed.

And if there is to be further inquiry, it is conducted by an independent body; the Canadian Human Rights Tribunal.

It is important to recognize that accepting a complaint does not substantiate the complaint. Approximately 10 percent of all complaints that come before the Commission continue on to the Tribunal.

In light of the importance of free expression, and the potential danger of unduly restricting it, the Supreme Court set a very high standard for what type of expression is the legitimate target of section 13.

All decisions rendered to date by the Tribunal on section 13 involving the Internet were decided in accordance with the standard set by the Supreme Court.

As a testament to the rigour of these standards, the words used to spread hatred in each case are so vile that anyone in this room would strain to repeat them.

The violence and evil that is born from spreading hatred demands our attention. Parliament has provided us with a mandate and we will continue to apply the law as we are obliged to do. We believe that section 13 is well founded in law and jurisprudence.

This does not discount the benefits of an honorable, responsible debate and a continuous examination of how our evolving society influences and manages these issues.

The Commission acknowledges that human rights are not static. They evolve and change with changes in society and the law.

A free and inclusive society must draw a line between free expression and hatred. They are not one in the same.

Free expression is the foundation of a free, open and inclusive society.

Hatred is the poison that erodes the tolerance and open-mindedness that must flourish in a multicultural society committed to the idea of equality.

Thank you.

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